

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 5977-01
Bill No.: SB 854
Subject: Health Dept.; Disabilities; Employees-Employers
Type: Original
Date: March 19, 2012

Bill Summary: Modifies provisions relating to the Employment Disqualification List for home care employees.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2013	FY 2014	FY 2015
Total Estimated Net Effect on General Revenue Fund	\$0	\$0	\$0

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2013	FY 2014	FY 2015
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 7 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2013	FY 2014	FY 2015
UC Administration Fund	(\$51,000,000)	(\$51,000,000)	(\$51,000,000)
Wagner-Peyser Admin Fund	(\$18,000,000)	(\$18,000,000)	(\$18,000,000)
Total Estimated Net Effect on <u>All</u> Federal Funds	(\$69,000,000)	(\$69,000,000)	(\$69,000,000)

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2013	FY 2014	FY 2015
Total Estimated Net Effect on FTE	0	0	0

☒ Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).

☐ Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2013	FY 2014	FY 2015
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of State Courts Administrator, Department of Mental Health, Department of Health and Senior Services, and Department of Revenue** assume the proposal will have no fiscal impact on their organizations.

Officials from the **Department of Social Services (DSS) - Human Resource Center (HR)** state the DSS already has an Administrative Policy 2-107 Background Checks which states that background check results which may cause the withdrawal of a conditional employment offer, rejection of an applicant, dismissal of an employee or rejection of a volunteer, etc., include but are not limited to those which:

- Display the propensity to harm a client (e.g., if an individual has been involved as a perpetrator in any child or elderly abuse which was substantiated or determined probable cause or reason to suspect and documented by a state agency, regardless of whether proven in court and whether a criminal conviction of any kind occurred);
- Demonstrate that an individual is unsuitable for employment or service including criminal acts for which they are under current charge or have been convicted, found guilty, pled guilty or no contest or nolo contendere, or received a suspended imposition of sentence (regardless of whether incarceration actually occurred).

The DSS abides by the same background screening and employment eligibility determination process as stated in this legislation. Because this section of the proposal states that the employer shall not be charged for unemployment insurance benefits based on wages paid to the employee or based on an employer making payments in lieu of contributions for work prior to the date of discharge, there could be a potential cost savings to DSS. However, due to the limited number of discharges for this reason, a cost savings was not reflected and is assumed to be minimal.

Officials from the **Department of Labor and Industrial Relations (DOL)** state under certain circumstances, the changes that would be made as a result of this proposal would allow for the non-charging of unemployment benefits paid to home health care workers who work for contributory employers and allow for relieving reimbursable employers of the liability for unemployment benefits to home health care workers.

The federal government and state governments are jointly responsible for administering the unemployment insurance (UI) system. State laws must meet certain federal requirements for the state agency to receive the administrative grants needed to operate its UI program and for employers to qualify for certain tax credits.

ASSUMPTION (continued)

The United States Department of Labor (USDOL) has informally notified the Department that this bill, as written, causes a conformity issue with respect to relieving reimbursable employers of liability.

A reimbursing employer is responsible for service attributable to the services with the reimbursing employer. Sections 3304(a)(6)(B) and 3309(a)(2), Federal Unemployment Tax Act (FUTA), address the attribution of benefit charges to reimbursing employers. In brief, reimbursing employers must pay "into the state's unemployment fund amounts equal to the amounts of compensation attributable" to such services. States may relieve reimbursing employers of liability when it is reasonably determined that the payment is not attributable to them (for example, overpayments and situations where claimants re-qualify after a disqualification); nothing permits a state to disregard all services performed in a certain capacity.

Non-conformity with federal law could jeopardize the certification of Missouri's UI program. If the program fails to be certified, Missouri would lose approximately \$51 million in federal funds the state receives each year to administer the UI program. Additionally, Missouri would lose the approximately \$18 million in federal funds each year the Department of Economic Development-Division of Workforce Development uses for Wagner-Peyser re-employment services.

The FUTA imposes a 6.0% payroll tax on employers. Most employers never actually pay the total 6.0% due to credits they receive for the payment of state unemployment taxes and for paying reduced rates under an approved experience rating plan. FUTA allows employers tax credits up to a maximum of 5.4% against the FUTA payroll tax if the state UI law is approved by the Secretary of Labor. However, if the proposed resolution causes Missouri's program to be out of compliance or out of conformity, Missouri employers would pay the full 6.0%, or approximately an additional \$868 million per year."

In addition, this proposal would increase pool charges to the unemployment trust fund. In order to assign a contribution rate based upon the experience of each covered contributory employer, the Division of Employment Security maintains a separate account for each employer where charges for unemployment benefits provided for the employees of that employer are tabulated. When unemployment benefits for a contributing employer are not charged to that employer, they are charged to a pool. In these cases, the responsible employer's tax rate is not directly affected by these charges. In general, pool charges cause tax rates for all contributory employers to remain higher than if these charges were attributable to the employer responsible for the benefit charges because secondary tax rate adjustments, not based on experience, are either activated or remain active.

ASSUMPTION (continued)

In order to assess the effect of this change on the Unemployment Insurance Trust Fund, charges were summarized for state fiscal year 2011 for contributing employers in the home health care industry. In SFY 2011, former employees of contributing employers in the home health care industry received unemployment benefits totaling approximately \$2.13 million. Had all of these benefits been non-charged due to circumstances outlined in the above changes, this proposal would have resulted in an additional \$2.13 million in pool charges in SFY 2011.

<u>FISCAL IMPACT - State Government</u>	FY 2013 (10 Mo.)	FY 2014	FY 2015
UC ADMINISTRATION FUND			
<u>Loss - UC Administration Fund</u> <u>(\$660.315)</u>			
Loss of federal funds	<u>(\$51,000,000)</u>	<u>(\$51,000,000)</u>	<u>(\$51,000,000)</u>
ESTIMATED NET EFFECT ON UC ADMINISTRATION FUND	<u>(\$51,000,000)</u>	<u>(\$51,000,000)</u>	<u>(\$51,000,000)</u>
WAGNER-PEYSER ADMINISTRATION FUND			
<u>Loss - Wagner-Peyser Admin Fund</u> <u>(\$660.315)</u>			
Loss of federal funds	<u>(\$18,000,000)</u>	<u>(\$18,000,000)</u>	<u>(\$18,000,000)</u>
ESTIMATED NET EFFECT ON WAGNER-PEYSER ADMINISTRATION FUND	<u>(\$18,000,000)</u>	<u>(\$18,000,000)</u>	<u>(\$18,000,000)</u>
 <u>FISCAL IMPACT - Local Government</u>	 FY 2013 (10 Mo.)	 FY 2014	 FY 2015
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

If the changes proposed in this legislation result in Missouri being out of compliance or conformity with federal laws, small business home care businesses could be required to pay the full 6.0% FUTA tax.

FISCAL DESCRIPTION

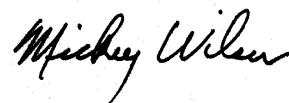
This proposal provides that any home care employer required to deny employment to an applicant or discharge an employee as a result of information obtained through a portion of the background screening and employment eligibility determination process required under the Family Care Safety Registry provisions shall not be liable in any action brought by the applicant or employee.

The employer shall also not be charged for unemployment insurance benefits based on wages paid to the employee or based on an employer making payments in lieu of contributions for work prior to the date of discharge, if the employer terminated the employee because the employee: (1) has pled guilty to or nolo contendere or been found guilty in this state or any other state of a crime, which if committed in Missouri would be a class A or B felony violation of certain specified crimes such as offenses against the persons, sexual offenses and robbery or burglary offenses; (2) was placed on the employee disqualification list maintained by the Department of Health and Senior Services, after the date of hire; (3) was placed on the employee disqualification list maintained by the Department of Mental Health, after the date of hire; (4) is listed on any of the background check lists in the Family Care Safety Registry; or (5) has a disqualifying finding or was denied a good cause waiver under the employee disqualification list maintained by the Department of Health and Senior Services.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Office of State Courts Administrator
Department of Mental Health
Department of Health and Senior Services
Department of Labor and Industrial Relations
Department of Revenue
Department of Social Services



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